

BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of License of:

OAH No. 2012101081

KENNETH EUGENE GALL

Petitioner.

DECISION

This matter was heard on November 8, 2012, before a quorum of the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, State of California, in Sacramento, California. Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, presided.

Jeffrey M. Phillips, Deputy Attorney General, appeared pursuant to Business and Professions Code section 2878.7, subdivision (b).

Petitioner Kenneth Eugene Gall represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on November 8, 2012.

SUMMARY

Petitioner's vocational nurse license was revoked, effective March 17, 1996, because he suffered felony convictions for possession of marijuana and prescription medication. He also used marijuana, even though he did not have a prescription. Petitioner has not abused prescription medication since 1995 and, while he stopped using marijuana only recently, he demonstrated a strong and convincing commitment to remaining sober from all illicit drugs. Clear and convincing evidence demonstrates that petitioner is capable of performing the duties of a vocational nurse in a manner consistent with public health, safety, and welfare, subject to terms and conditions. Therefore, his Petition for Reinstatement of License is granted, subject to the terms and conditions specified in the Order below.

5. Petitioner filed his current Petition for Reinstatement of License (Petition) on October 1, 2012. He provided the following explanation for why his license was revoked:

In 1993, I was experiencing the loss of a loved one, became severely depressed + withdrawn from the grieving process. Being a caregiver for this person at the time, I never discarded his medication, which included narcotic controlled substances. One day at work, I went out for lunch break with a friend of mine, was sitting in her car smoking a marijuana joint + was busted by the Newport Beach Police Department, which led to [a] search of my belongings + that's when he found the loose narcotic pills on me, which I never discarded. I was given drug diversion + I never completed the program. So I received a 90 day county jail sentence along with probation, which I completed. When this was all over, I moved out of the county to S.F. which I failed to notify my change of address to the BVNPT + continued working + eventually discovered my license had been revoked.

6. Respondent disclosed on his Petition two criminal convictions since his license was revoked – a 1995 driving under the influence conviction and a 2008 citation for having an open container of alcohol in public. The Attorney General's Office represented at hearing that neither conviction appears on petitioner's criminal history with the California Department of Justice. At hearing, petitioner did not explain his 1995 conviction, but said his 2008 citation arose out of his drinking a can of beer while sitting on a pier on the ocean in San Francisco. A police officer saw him and issued a ticket.

7. Petitioner's hearing testimony about the factual basis for his 1994 drug convictions was consistent with the explanation he provided in his Petition. He further explained that he did not realize he was suffering from Post Traumatic Stress Disorder (PTSD) as a result of his partner's death in 1993 until years later. While he stopped abusing prescription medication in 1995, he continued using marijuana on a regular basis until January 2012.

8. After his first petition was denied in 1998, petitioner had all but given up on ever getting his license reinstated. He began working as a caregiver, mainly through placement agencies. He has worked as a caregiver for Acclaim Homecare on an on-call basis since April 2011. Prior to that, he was a private duty caregiver for an individual in San Anselmo, California.

9. Working as a caregiver reminded petitioner of his love of nursing and his ultimate goal of becoming a registered nurse. He enrolled in City College of San Francisco at the beginning of the Spring Semester of 2002 and completed the prerequisite courses for the registered nursing program by the end of the Summer Semester of 2004. He placed his plans to enroll in the two-year registered nursing program "on the backburner."

When considering a) the denial of a license under Section 480 of the Business and Professions Code, b) the suspension or revocation of a license on the ground that a licensee has been convicted of a crime, or c) a petition for reinstatement of a license under Section 2787.7 of the Business and Professions Code, the Board in evaluating the rehabilitation of an individual and his or her present eligibility for a license, will consider the following criteria:

- (1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.
- (2) Actual or potential harm to the public.
- (3) Actual or potential harm to any patient.
- (4) Overall disciplinary record.
- (5) Overall criminal actions taken by any federal, state or local agency or court.
- (6) Prior warnings on record or prior remediation.
- (7) Number and/or variety of current violations.
- (8) Mitigation evidence.
- (9) In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
- (10) Time passed since the act(s) or offense(s) occurred.
- (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to Penal Code section 1203.4.
- (12) Cooperation with the Board and other law enforcement or regulatory agencies.
- (13) Other rehabilitation evidence.

12. Petitioner's license was revoked because he abused prescription drugs and marijuana and was convicted of crimes related to such behavior. But he has been sober from prescription drugs since 1995 and, while his sobriety from marijuana is much more recent, the above evidence demonstrates his strong commitment to remaining sober from all illicit drugs. He explained he did not take his sobriety seriously at the time the Board considered

by clear and convincing evidence that he or she is entitled to the relief sought in the petition.

(c) The board itself or the administrative law judge, if one is designated by the board, shall hear the petition and shall prepare a written decision setting forth the reasons supporting the decision.

(d) The board may grant or deny the petition or may impose any terms and conditions that it reasonably deems appropriate as a condition of reinstatement or reduction of penalty.

(e) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole or subject to an order of registration pursuant to Section 290 of the Penal Code. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.

(f) Except in those cases where the petitioner has been disciplined for a violation of Section 822, the board may in its discretion deny without hearing or argument any petition that is filed pursuant to this section within a period of two years from the effective date of a prior decision following a hearing under this section.

(g) Nothing in this section shall be deemed to alter the provisions of Sections 822 and 823.

2. For the reasons discussed in Factual Finding 12, petitioner established by clear and convincing evidence the existence of good cause to reinstate his vocational nurse license. Therefore, his Petition for Reinstatement of License is granted, subject to the terms and conditions specified in the Order below.

ORDER

Petitioner Kenneth Eugene Gall's Petition for Reinstatement of License is GRANTED and a license shall be ISSUED after he successfully passes the licensure examination. However, the license issued shall be immediately REVOKED, but the Order shall be STAYED and the license placed on PROBATION for three years on the following terms and conditions:

1. **TAKE AND PASS LICENSURE EXAMINATION:** Prior to resuming

change in address or telephone number(s). His failure to claim mail sent by the Board may be deemed a violation of these probation conditions.

6. **NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE:** Petitioner shall notify the Board, in writing, within five (5) days, if he leaves California to reside or practice in another state. Periods of residency or practice outside of California shall not apply toward a reduction of this probation time period. If petitioner resides or practices outside of California, the period of probation shall be automatically extended for the same time period he resides or practices outside of California. Petitioner shall provide written notice to the Board within five (5) days of any change of residency or practice.

Petitioner shall notify the Board, in writing, within five (5) days, upon his return to California.

7. **MEETINGS WITH BOARD REPRESENTATIVE(S):** Petitioner shall appear in person at meetings as directed by the Board or its designated representatives.

8. **NOTIFICATION TO EMPLOYER(S):** If currently employed and when applying for employment in any capacity in any health care profession, petitioner shall notify his employer of the probationary status of his license. This notification to petitioner's current health care employer, if any, shall occur no later than the effective date of the Decision. Petitioner shall notify any prospective health care employer of his probationary status with the Board prior to accepting such employment. At a minimum, this notification shall be accomplished by providing the employer or prospective employer with a copy of the Board's Accusation and Disciplinary Decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Petitioner shall cause each health care employer to submit to the Board all performance evaluations and any other employment related reports as required by the Board. He shall notify the Board, in writing, of any difficulty in securing employer reports within five (5) days of such an event.

Petitioner shall notify the Board, in writing, within five (5) days of any change in employment status. He shall notify the Board, in writing, if he is terminated or separated, regardless of cause, from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination or separation.

9. **EMPLOYMENT REQUIREMENTS AND LIMITATIONS:** Petitioner shall work in his licensed capacity in the State of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week. He shall not

each written report as required by the Board. Petitioner shall continue attendance in such a group for the duration of probation.

14. **ABSTAIN FROM CONTROLLED SUBSTANCES:** Petitioner shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in Section 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

15. **SUBMIT BIOLOGICAL FLUID SAMPLES:** Petitioner shall immediately submit to biological fluid testing, at his cost, upon request by the Board or its designee. There will be no confidentiality in test results; positive test results will be immediately reported to the Board and petitioner's current employer.

16. **MAINTENANCE OF VALID LICENSE:** Petitioner shall, at all times, maintain an active current license with the Board including any period of suspension. If an initial license must be issued (Statement of Issues) or a license is reinstated, probation shall not commence until a license is issued by the Board. Petitioner must complete the licensure process within two (2) years from the effective date of the Board's Decision. Should petitioner's license expire, by operation of law or otherwise, upon renewal or reinstatement, his license shall be subject to any and all conditions of this probation not previously satisfied.

17. **LICENSE SURRENDER:** If petitioner ceases practicing during probation due to retirement, health reasons, or is otherwise unable to satisfy the conditions of probation, he may surrender his license to the Board. The Board reserves the right to evaluate his request and to exercise its discretion whether to grant the request without further hearing. Upon formal acceptance of the tendered license, petitioner will no longer be subject to the conditions of probation.

Surrender of petitioner's license shall be considered a disciplinary action and shall become a part of his license history with the Board. A licensee who surrenders his license may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision for the surrender:

- Three (3) years for reinstatement of a license surrendered for any reason other than a mental or physical illness; or
- One (1) year for a license surrendered for a mental or physical illness.

18. **VIOLATION OF PROBATION:** If petitioner violates the conditions of his probation, the Board, after giving him notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (denial/revocation/suspension) of petitioner's license. If during probation, an accusation or petition to revoke probation has been filed against petitioner's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against his license, the probationary period shall